IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3104 of 1991

For Approval and Signature:

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KOKILABEN R ANTHARIA - Petitioner(s)
Versus
DISTRICT PRIMARY EDUCATION OFFICER & 2 - Respondent(s)

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Appearance :
MR VK JOSHI for Petitioner(s) : 1,
MR KETAN A DAVE for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
Ms.Krina P.Calla,learned AGP for Respondent(s) : 3,

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CORAM : HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 28/02/2007

ORAL JUDGMENT

1. By way of filing the present writ petition under Article 226 of the Constitution of India, the petitioner i.e. Kumari Kokilaben Ratilal Antharia has prayed to issue a writ of mandamus or any other direction or order, directing the respondents to absorb the petitioner in the pay scale of Rs.260-400 with effect from 1-1-1976 and also to declare that the petitioner is entitled for all the consequential benefits attached to the pay scale and for arrears/difference in salary.

2. Briefly stated, the facts as narrated in the petition are that the petitioner was appointed on a temporary basis as a Samaj Sanchalika in the Samaj Shikshan Kendra, which is clear from the order of appointment dated 11-1-1971 issued by respondent No.1, annexed at annexure “B” to the petition. As per the averments made in the petition, the petitioner was getting a fixed basic pay of Rs.30/- plus Dearness Allowance of Rs.204.50 Ps. which works out to Rs.234.50 Ps. in all. The Salary Certificate has

been produced at Annexure “C” to the petition.

3. The case of the petitioner is that time and again, she had requested the respondents to absorb her in the Primary School run by the respondents and give her the salary of a Pre-Primary Teacher since, according to her, she possesses the requisite qualifications. It is stated in the petition that the petitioner made several representations to this effect to the respondents, which fell upon deaf ears. The representation dated 10-3-1981 addressed to respondent No.1 for absorbing her as a Primary Teacher in the Primary School run by the respondents is annexed as Annexure “D” to the petition and another representation dated 13-10-1990 is to be found at Annexure “E” to the petition.

4. According to the petitioner, one Anilaben L.Dave, who possesses the same qualifications as the petitioner, and who was appointed as Samaj Sanchalika in the Samaj Shikshan Kendra on 7-12-1981 i.e. after the appointment of the petitioner, was absorbed as untrained Primary Teacher in the pay scale of Rs.260-350 by the respondents and since the petitioner is senior to the said Anilaben, she should also be

similarly absorbed as Primary Teacher. It is emphasised that by not giving her similar treatment as meted out to Anilaben, the respondents have discriminated against the petitioner, as according to her, she is performing the duties of a Primary Teacher and her claim for absorption as such and for salary has been wrongly ignored by the respondents.

5. In support of her case, the petitioner has placed reliance upon a Circular/Resolution of the Government of Gujarat regarding the absorption of Pre-Primary Teachers in Primary Schools, issued by the Education Committee, Gandhinagar and bearing No.PRE/1378/55659/K dated 30-10-1980. According to this Resolution, the Samaj Sanchalikas would be absorbed as Primary Teachers subject to their possessing the required educational qualifications. Absorption in different categories is contemplated by the said Resolution depending upon the qualifications possessed by the Samaj Sanchalikas. As the petitioner has not been absorbed as Primary Teacher in pursuance of the said Resolution, she has filed the present writ petition and prayed for the reliefs mentioned earlier.

6. An affidavit-in-reply dated 25-6-1991 has been filed by Smt.Kumudben M.Bhatt, Deputy District Primary Education Officer, District Panchayat, Bhavnagar on behalf of respondent No.1. The Government Resolution dated 30-10-1980, relied upon by the petitioner, has been produced at Annexure -I to the reply affidavit and it is stated therein that since the petitioner, does not possess the educational qualification of S.S.C. as mentioned in para “C” of the said Resolution, she cannot be absorbed as an untrained Primary Teacher. It is emphasised in the reply that the petitioner is paid the full salary of Samaj Sanchalika, as mentioned in the order of her appointment. It is also denied that she has been officially assigned the duties of teaching Standards I-II-III as stated by the petitioner and it is further emphasised that if the petitioner has, at any point of time, conducted classes for these Standards in the absence of any teacher, that alone would not entitle her to be absorbed in the cadre of untrained Primary Teacher, without possessing the necessary qualifications. It is clarified in the reply that the cadres of Pre-Primary Teacher and Primary Teacher are different and separate pay scales are prescribed for them. The

educational qualifications of both cadres are also different. It is further stated in the reply affidavit that the case of the petitioner is not similar to that of Anilaben, who was absorbed as untrained Teacher since she possessed the requisite qualification of S.S.C., which the petitioner does not possess. The allegations of discrimination are denied and it is prayed that the petition be dismissed. No rejoinder has been filed by the petitioner to controvert the averments made in the reply affidavit.

7. This Court has heard Mr.V.K.Joshi, learned counsel for the petitioner, Mr.Ketan A.Dave, learned counsel for respondent No.1 and Ms.Krina P.Calla, learned Assistant Government Pleader for respondent No.3 – State of Gujarat and has perused the material on record. A bare perusal of para “C” of the Government Resolution dated 30-10-1980 makes it very clear that those Samaj Sanchalikas who were possessing the qualification of S.S.C. would be absorbed/ appointed as untrained Teacher officially in the pay scale of Rs.260-350 initially, till they acquire the qualification of P.T.C. According to the said Resolution, those Samaj Sanchalikas, who do not

possess the qualification of S.S.C. will have to be considered for absorption in Class IV posts.

8. The petitioner has placed reliance upon the Government Resolution dated 30-10-1980 in support of her case for absorption as a Primary Teacher in the School run by the respondents. In that situation, the petitioner will necessarily have to fulfill the eligibility criteria, including that of educational qualification, which has been laid down in the said Government Resolution, whereby the Samaj Sanchalikas have been categorised for absorption into Government service in accordance with the educational qualifications that they possess. Admittedly, the petitioner does not possess the qualification of S.S.C., which is necessary for absorption as untrained Teacher under the Government Resolution dated 30-10-1980. The learned counsel for the petitioner has drawn the attention of this court to the representation of the petitioner dated 13-10-1990 annexed as Annexure “E” to the petition, wherein the petitioner has mentioned the educational qualification possessed by her, at running page 16 of the petition. A perusal of the same reveals that although the qualification of Pre P.T.C. is mentioned

by the petitioner, there is no mention of the qualification of S.S.C. It is, therefore, evident that the petitioner, though may be possessing the qualification of Pre-P.T.C., does not possess the qualification of S.S.C. which is necessary in order to become eligible for absorption, as contemplated by the Government Resolution dated 30-10-1980, as untrained Teacher. It is also evident from the record that the Pre-Primary Teachers and Primary Teachers are forming different cadres and the Government Resolution also stipulates that on initial absorption as untrained Teacher, the candidates possessing the qualification of S.S.C. will be given the scale of Rs.260-350 only till they obtain the qualification of P.T.C. Since specific eligibility criteria has been laid down by the Government in order to absorb Samaj Sanchalikas into Government service, according to the qualification possessed by them, and since the qualification of S.S.C. which the petitioner does not possess is necessary for absorption as untrained Teacher, the prayer made by the petitioner in the instant writ petition cannot be granted. Further, as stated by the respondent No.1 in the reply affidavit, the case of the petitioner is not similar to that as Anilaben, who possesses the necessary qualification

of S.S.C. and was therefore absorbed as an untrained teacher. Looking from every angle, the claim of the petitioner is untenable and the plea of discrimination raised by the petitioner also has no substance.

9. In the light of the above, the writ petition deserves to be dismissed as being devoid of any merit.

10. Accordingly, the writ petition is dismissed. However, it is clarified that the dismissal of the writ petition will not come in the way of the petitioner if the respondents consider the absorption of the petitioner in any other post as contemplated by the Government Resolution dated 30-10-1980, in accordance with the qualification possessed by the petitioner, if the petitioner represents to the concerned authorities in this behalf. Subject to the above directions rule is discharged. The interim order is vacated. There shall be no orders as to costs.

(Smt.Abhilasha Kumari,J)

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